

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #95-11**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Application of Tennessee Sales and Use Tax to providers of medical equipment.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

**FACTS**

\_\_\_\_\_ seeks a ruling on whether the following list of twenty-eight (28) types of medical equipment, associated parts and supplies are subject to Tennessee sales and use tax:

1. Elastic Bandages
2. Casting Materials
3. Splints

4. Slings
5. Knee Immobilizers
6. Orthopedic Stockinettes
7. Orthopedic Collars and Braces
8. Feeding Bags and Tubes
9. Urological Catheters
10. Drainage Catheters
11. Sutures
12. Insulin
13. Hypodermic Needles
14. Ostomy Products
15. Prescription Drugs
16. IV Solutions
17. IV Sets
18. Non-Prescription Medicated Bandages
19. Dietary Products -- Dietary products are nutritional food substitutes which can be sold in either liquid form or powder form to doctors, hospitals, nursing homes, or drug stores. Dietary products are sometimes prescribed by physicians; other times they are purchased without a prescription. Dietary products are sometimes fed to patients with digestive or ingestive problems through feeding bags or tubes.
20. Enema Products
21. Non-Prescription Drugs
22. Diagnostic Chemicals
23. Rubbing Alcohol
24. Pessaries
25. Pregnancy Tests
26. Veterinary Drugs
27. Flea Collars and Shampoos
28. Flea Foggers and Yard Sprays

### **QUESTIONS**

- A. Whether the listed items of tangible personal property are subject to sales or use tax.
- B. Whether there is a distinction for tax purposes if the tax exempt prosthetic or orthotic devices are sold to hospitals or doctors by the distributor rather than to the patient.

### **RULINGS**

- A. The twenty-eight (28) types of medical equipment, associated parts and supplies are subject to Tennessee Sales and Use Tax as follows:

1. Elastic Bandages are exempt from sales and use tax.

2. Casting Materials are exempt from sales and use tax.
3. Splints are exempt from sales and use tax.
4. Slings are exempt from sales and use tax.
5. Knee Immobilizers are exempt from sales and use tax.
6. Orthopedic Stockinettes are exempt from sales and use tax.
7. Orthopedic Collars and Braces are exempt from sales and use tax.
8. Feeding Bags and Tubes are exempt from sales and use tax.
9. Urological Catheters are exempt from sales and use tax.
10. Drainage Catheters are exempt from sales and use tax.
11. Sutures are exempt from sales and use tax.
12. Insulin is exempt from sales and use tax.
13. Hypodermic Needles are subject to sales and use tax if not sold for use in dispensing insulin.
14. Ostomy Products are exempt from sales and use tax.
15. Prescription Drugs are exempt from sales and use tax.
16. IV Solutions are exempt from sales and use tax if prescribed by a practitioner of the healing arts.
17. IV Sets are subject to sales and use tax.
18. Non-Prescription Medicated Bandages are subject to sales and use tax.
19. Dietary Products are subject to sales and use tax unless the product meets the statutory definition for "drug" and is prescribed by a physician for a medically necessary purpose.
20. Enema Products are generally subject to sales and use tax. Enema devices used to administer enemas are subject to sales tax. The enema solution may be exempt if it meets the statutory definition for "drug" and is prescribed by a physician for a medically necessary purpose.
21. Non-Prescription Drugs are subject to sales and use tax.
22. Diagnostic Chemicals are subject to sales and use tax.
23. Rubbing Alcohol is subject to sales and use tax.
24. Pessaries are subject to sales and use tax.
25. Pregnancy Tests are subject to sales and use tax.
26. Veterinary Drugs are subject to sales and use tax.
27. Flea Collars and Shampoos are subject to sales and use tax.
28. Flea Foggers and Yard Sprays are subject to sales and use tax.

B. Prosthetic and orthotic devices other than artificial limbs and wheelchairs are exempt whether sold to hospitals, doctors, or patients. Artificial limbs and wheelchairs are exempt only when sold to the person who will use the device.

### **ANALYSIS**

1. The sale of tangible personal property is generally subject to sales and use tax unless an exemption applies. Several specific exemptions apply to the sale of medical equipment and supplies.

#### **Orthotics**

An exemption from the sales tax is provided for the sale of prosthetics, orthotics, special molded orthopedic shoes, walkers, crutches, surgical supports of all kinds, and other similarly medical corrective or support appliances and devices.

T.C.A. Section 67-6-314(5). The Department has applied the exemption for orthotics to devices used to brace, support, or align the skeletal or muscular system. The first seven (7) items listed, elastic bandages, casting materials, splints, slings, knee immobilizers, orthopedic stockinettes, and orthopedic collars and braces, are all used to brace, support, or align the skeletal or muscular system and are thus subject to the exemption.

#### **Prosthetics**

An exemption from the sales tax is provided for the sale of prosthetic medical devices. T.C.A. 67-6-314(5). A device is prosthetic if it is an artificial part which substitutes for or augments the performance of a natural function. *Cordis Corp. v. Taylor*, 762 S.W.2d 138 (Tenn. 1988).

Enteral and parenteral feeding systems used by patients who have missing, damaged, or inoperative ingestion or digestive systems have been held to be tax exempt prosthetics. *Nutritional Support Services, Ltd. v. Taylor*, Davidson Chancery No. 88-788-II(I) (1989). Item 8, feeding bags and tubes which feed patients who cannot swallow, are thus tax exempt prosthetics pursuant to the holding of *Nutritional Support Services*.

The prosthetic exemption also applies to catheters which replace a missing body part or augment a body function. The prosthetic exemption does not apply to catheters which serve as reparative or surgical tools. Item 9, urological catheters, are tax exempt prosthetics if used for excretion of urine due to some malfunction or surgical procedure.

Item 10, drainage catheters, are described as hollow tubes temporarily placed in the patient to eliminate fluid. None of these drainage catheters are angioplasty catheters. As described, these drainage catheters are prosthetic devices.

Item 11 is sutures. Sutures have been exempted by the Department as prosthetic devices when imbedded in the body of an individual in order to augment or enhance the healing

of the body. The activity of the body which causes a closure or healing of a wound is clearly a body function.

#### Insulin

T.C.A. 67-6-312 exempts from sales and use tax the sale "of insulin and any syringe used to dispense insulin." Item 12, insulin, is thus specifically exempted.

Item 13, hypodermic needles, qualify for this exemption if they are sold for use in dispensing insulin. Hypodermic needles do not otherwise qualify for any exemptions.

#### Ostomy Products

T.C.A. 67-6-317 exempts from sales and use tax "the sale of ostomy products or appliances for use by persons who have had colostomies, ileostomies or urostomies." Item 14, ostomy products, are therefore exempt if used by persons who have need of such items because of colostomies, ileostomies or urostomies.

#### Prescription Drugs

T.C.A. 67-6-320 reads as follows:

- (a) There is exempt from the tax imposed by this chapter any prescription drug or medicine issued by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a practitioner of the healing arts licensed by the state of Tennessee.
- (b) There is also exempt from the tax imposed by this chapter any prescribed drug or medicine sold to a practitioner of the healing arts licensed by the state of Tennessee or issued by a licensed pharmacist for use in the treatment of a human being.

Item 15, prescription drugs, clearly qualify for this exemption so long as the qualifying conditions are satisfied. The prescription drug must either be sold to a practitioner of the healing arts or issued by a licensed pharmacist.

Item 16, IV solutions, also qualify for this exemption if prescribed by a practitioner of the healing arts. IV sets do not qualify for this exemption.

Items 18, medicated bandages, do not qualify for the exemption provided to prescription drugs. The medicated bandages have been described as premedicated with nonprescription drugs. The exemption applies only to prescription drugs.

Item 19, dietary products, may be exempt prescription drugs under certain circumstances. In order to qualify for the exemption afforded prescription drugs, the dietary

products must first, in fact, be a drug or medication. The term "drug" is not defined within the sales and use tax code, however, the Tennessee Food, Drug and Cosmetics Act defines drug to mean "[a]rticles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals." T.C.A. Section 53-1-102(9)(B). Dietary products taken in place of food by people attempting to lose weight are a food rather than drug or medication and thus not subject to the exemption. If the dietary product is a drug or medication, it must then also be prescribed by a physician for a medically necessary purpose in order to qualify for the exemption.

Item 20, enema products, may also qualify for the prescription drug exemption under certain circumstances. The device or instrument used to administer enemas is subject to sales tax is the sale of tangible personal property. The enema solution is exempt if prescribed by a physician for a medically necessary purpose and if the solution is, by statutory definition, a drug or medicine. In addition to the definition for "drug" cited in the prior paragraph, drug is also defined in the Tennessee Food, Drug and Cosmetics Act to mean "[a]rticles (other than food) intended to affect the structure or any function of the body of man or other animals." T.C.A. Section 53-1-102(9)(C).

Item 21, non-prescription drugs, by their terms do not qualify for the prescription drug exemption.

#### The Remaining Items

The remaining items, diagnostic chemicals, rubbing alcohol, pessaries, pregnancy tests, veterinary drugs, flea collars and shampoos, and flea floggers and yard sprays, do not qualify for any sales and use tax exemption.

2. The Code draws no distinction based on whether tax exempt prosthetic and orthotic devices other than artificial limbs and wheelchairs are purchased by hospitals, doctors, or the ultimate patients. T.C.A. Section 67-6-314 reads, in full, as follows (emphasis added):

There is exempt from the sales tax imposed by this chapter:

- (1) The transfer of an artificial limb to a person who has need for such artificial limb due to loss of an arm or leg or any part thereof, and the retail sale of lift devices designed to permit ingress and egress of handicapped persons confined to wheelchairs from their personal motor vehicles;
- (2) The sale of any item necessary for the use or wearing of any artificial limb;

- (3) The sale of a wheelchair to a handicapped person who has need for such device;
- (4) The sale of, to handicapped persons who personally use such items, any necessary maintenance service on any artificial limb, lift device, or wheelchair; and
- (5) The sale of prosthetics, orthotics, special molded orthopedic shoes, walkers, crutches, surgical supports of all kinds, and other similarly medical corrective or support appliances and devices.

Subsections 1, 3, and 4 of T.C.A. 67-6-314 are specifically limited by their terms to sales to certain types of persons. Subsection 5, however, includes no such restriction. It is a rule of statutory construction that a specific provision relating to a particular subject controls and takes precedence over a general provision applicable to a multitude of subjects. The special provision is deemed an exception and the general provision is "construed to operate on all subjects introduced therein except the particular one which is the subject of the special provision." *State v. Rainey*, 1994 Tenn. Crim. App. LEXIS 463, citing *State v. Safley*, 172 Tenn. 385, 112 S.W.2d 831, 833 (1938).

Applying this rule of statutory construction in this instance leads to the conclusion that artificial limbs and wheelchairs must be sold to the person who will use them in order to qualify for the exemption while all other prosthetic devices are exempt without regard to whom they are sold.

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APPROVED: Ruth E. Johnson, Commissioner

DATE: 3/30/95